IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:13/8/2004

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The Hon'ble Mr.Justice P.SATHASIVAM
and
The Hon'ble Mr.Justice S.SARDAR ZACKRIA HUSSAIN

HABEAS CORPUS PETITION NO.436 OF 2004

Karuppalagu ... Petitioner

-VS-

1. The State of Tamil Nadu
Represented by Secretary to Government
Prohibition and Excise Department
Fort St. George
Madras - 600 009

2. The District Magistrate
and District Collector
Tirunelveli District
Tirunelveli ... Respondents

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Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Habeas Corpus, directing to produce the records of the second respondent pertaining to the detention order made in M.H.S. Confidential No.1/2004 dated 22.01.2004 in detaining the detenu Karuppalagu under Tamil Nadu Act 14 of 1982 an d set aside the same and direct the respondents to produce the said detenu, namely, Karuppalagu, confined at Central Prison, Palayamkottai, before this Court and set him at liberty.

!For Petitioner : Mr.K.Gandhi Kumar

^For respondents : Mr.G.Arul
Government Advocate (Criminal Side)

:ORDER

(Order of the Court was made by P.SATHASIVAM,J.)

The petitioner Karuppalagu is the detenu, who challenges the order of detention dated 22.01.2004 in and by which he was detained as Goonda under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders,

Forest offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982 (Tamil Nadu Act 14 of 1982). The ground case referred in the grounds of detention relates to an occurrence that took place on 11.01.2004 for which he was charged for various offences, namely, 341, 294(b) and 307 IPC and Section 3 of the Explosive Substances Act. The petitioner has three adverse cases to his credit all for various offences under IPC.

2. Heard the learned counsel for the petitioner as well as the learned Government Advocate for respondents.

3. Even at the outset, learned counsel for the petitioner, by drawing our attention to the reference made in paragraph 6 of the grounds of detention, would contend that in the absence of supply of copy of the remand order, the ultimate order passed by the detaining authority cannot be sustained. On the other hand, learned Government Advocate appearing for the respondents submitted that though the copy of the remand order was not furnished to the detenu, copy of the remand warrant was furnished to him and hence, no prejudice is caused to him due to non-supply of the remand order. He also contended that the same was not relied on by the detaining authority.

4. We have considered the rival submissions. With reference to the contentions raised by the learned counsel for the petitioner, we have verified paragraph 6 in the grounds of detention. It is clear that the detaining authority was very well aware that the detenu was in remand and lodged at Central Prison, Palayamkottai, at the time of passing of the detention order. Having said so, as rightly argued by the learned counsel for the petitioner, the detaining authority ought to have obtained the remand order and supplied copy of the same to the petitioner in order to make effective representation. Though copy of the remand warrant was supplied to the detenu, as rightly argued, it does not contain the statement of the accused said to have been made by him before the learned Magistrate at the time of passing of the order. In this regard, the learned counsel for the petitioner heavily relied on the Division Bench decision of this Court in CHINNA PONNU vs. THE SECRETARY, PROHIBITION AND EXCISE DEPARTMENT, GOVERNMENT
OF TAMIL NADU, FORT ST. GEORGE, CHENNAI - 9 (2000 (2) MWN (CRL) 52). In the case before the Division Bench, the detaining authority made his order by taking note of the fact that the detenu was on remand. The case on hand is similar to the case dealt with by the Division Bench. Considering the fact that the detenu was not supplied with copy of the remand order, the Division Bench has concluded thus:
"However, when the detenu sought the copy of the remand order in order to make an effective representation, there was a duty cast on the authorities to furnish that order as it is well known that the remand order is not only a judicial order, but one which would contain the complaint if any made by the detenu at the time of the detenu's production before the Magistrate regarding the ill-treatment, if any, suffered by the detenu at the hands of the sponsoring authority. The fact that any such complaint had been made has only to be established by the production of the remand order. That fact cannot be expected to be gathered from the special report which may or may not correctly set out, all that had transpired at the time the remand was ordered."

Hence, inasmuch as the remand order is not only a judicial order but which normally contain the complaint of the accused, if any, made at the time of his production before the Magistrate, those facts cannot be gathered from the remand warrant or from spe cial report. In such circumstance, we agree with the contention raised by the learned counsel for the petitioner and reject the stand taken by the learned Government Advocate. Inasmuch as by non-supply of the vital document, viz., remand order, the detenu has lost valuable right to make effective representation to the authority concerned. No doubt, the petitioner has not specifically prayed for copy of the said remand order. In the light of the fact that the detaining authority has relied on and considering the fact that on the date of detention order the detenu was in prison and in the absence of furnishing copy of the same, we are of the view that the ultimate order passed by him cannot be sustained.

5. In the result, the order of detention is set aside and the Habeas Corpus Petition is allowed. The detenu - Karuppalagu is directed to be set at liberty forthwith from the custody unless his detention is required in connection with any other case or cause.

Index :Yes.
Internet:Yes.

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To

1. The Secretary to Government
Prohibition and Excise Department
Fort St. George
Madras - 600 009

2. The District Collector
and District Magistrate
Tirunelveli District

3. The Superintendent
Central Prison
Palayamkottai

4. The Joint Secretary to Government
Public (Law and Order)
Fort St. George
Madras - 600 009

5. The Public Prosecutor
High Court
Madras - 104

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